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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 ROBERTO MONCADA,

11 Plaintiff,

12 v.

13 ANTONY BLINKEN, in his official
14 capacity as U.S. Secretary of State,

15 Defendants.

16 Case No. CV 19-01293-AB

17 **FINDINGS OF FACT AND
18 CONCLUSIONS OF LAW**

19 **TRIAL DATE: September 28, 2022**

20 This matter was tried before this Court, sitting without a jury, on September 28,
21 2022.

22 Robert G. Berke and Carlo Brooks appeared on behalf of Plaintiff Roberto
23 Moncada. Ruth Ann Mueller and Angel Martinez appeared on behalf of Defendant,
24 Antony Blinken, in his official capacity as United States Secretary of State.

25 Having heard the admissible evidence presented by the parties, the arguments
26 of counsel, and having considered the demeanor and credibility of the witness and all
27 papers and exhibits presented by the parties for purposes of this trial, the Court makes

the following findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

Introduction

Mr. Moncada has lived his entire life as a United States citizen because the United States government told Mr. Moncada that he was a citizen. And then they told him again. (*See e.g.*, Dkt. No. 125, Stipulated Fact (“SF”) 7.) And again. (*Id.*) And again. (*Id.*) And again. (*Id.*)

Indeed, on multiple occasions, the government sought to answer precisely the same question animating this litigation: What was Mr. Moncada’s father’s diplomatic status at the time of Mr. Moncada’s birth? And on multiple occasions, the government determined that because Dr. Moncada did not have full diplomatic immunity at the time of his son’s birth, “Roberto Moncada would therefore have acquired U.S. citizenship at birth.” (Ex. 29 at DEF-00000018.)

However, on July 27, 2018, the government finally (and somewhat curiously) stumbled across its mistake, and Mr. Moncada—two years shy of 70—received a letter revoking his passport and, in effect, his citizenship.

At trial, the government categorized its near seventy-year error as “a very unfortunate and regrettable situation” telling the Court that “[w]e do not hide the fact that this is unfortunate, this is regrettable, but there were mistakes that were made . . .

1 these are unfortunate administrative errors. . .” (Tr. at 176:16-20.) The “unfortunate
2 and regrettable” defense is not one that the Court has ever known the government to
3 accept from a Defendant. But for Mr. Moncada, apparently, it will have to do.
4

5 The Court is unable to grant the relief Mr. Moncada seeks because it is
6 constrained by the applicable law, as set forth below. The government, though, is not.
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9 **FINDINGS OF FACT**

10 **A. The United States Mission to the United Nations**

11 1. The United States Mission to the United Nations (“USUN”) is the U.S.
12 permanent mission that represents the United States at the United Nations. (*See* Tr.
13 12:11-13, 14:20-25.)

14 2. The USUN is “its own entity under the Department of State.” (*Id.* at
15 53:19-54:4) (Donovan).

16 3. A permanent mission to the United Nations is a diplomatic mission in
17 New York that houses the diplomatic delegation of a member state to the United
18 Nations. (*Id.* at 109:17-19; Dkt. No. 143-1 at 3 ¶ 8.)

19 4. James B. Donovan serves as the Minister Counselor for Host Country
20 Affairs Section at USUN (“Minister Counselor”). The Host Country Affairs Section
21 is charged with “[a] variety of responsibilities that pertain to the obligations that the
22 U.S. has to the United Nations and that are spelled out in the UN headquarters
23 agreement that the United States signed with the United Nations . . . in 1947 as host
24 country of the United Nations.” (*Id.* at 12:11-13, 13:10-14) (Donovan).

25 5. “Minister Counselor” is “a diplomatic label for a position within the
26 mission.” (*Id.* at 12:17) (Donovan).

1 6. Minister Counselor Donovan has held his position since 2012. (Tr. 13:7-
2 8) (Donovan).

3 7. The Court found Minister Counselor Donovan to be a credible witness.

4 8. One of Minister Counselor Donovan's primary responsibilities is "to
5 register [the foreign diplomats who come to serve their countries at their missions to
6 the United Nations] . . . and accredit them and recognize those that are eligible with
7 privileges and immunities." (*Id.* at 13:15-19) (Donovan).

8 9. The office of Host Country Affairs "exist[s] to support the foreign
9 diplomats in a variety of ways." (*Id.* at 13:21-22) (Donovan).

10 10. The *only* office at the U.S. Mission that affords privileges and immunities
11 to U.N. diplomats is the office of Host Country Affairs. (*Id.* at 14:22-25.)

12 11. There are no other offices within the U.S. government that afford
13 privileges and immunities to diplomats "of other countries of the United Nations that
14 are posted to the United States." (*Id.* at 15:1-5) (Donovan).

15 12. Employees at the USUN are Department of State employees and report
16 "to the ambassadors who are representing and serving at the [USUN]." (*Id.* at 50:17-
17 20) (Donovan).

18 13. Presently, if questions arise regarding an individual's diplomatic
19 privileges and immunities, such questions are referred to Minister Counselor Donovan
20 because it is his responsibility "to review and analyze these cases." (*Id.* at 15:19-16:1)
21 (Donovan).

22 14. Minister Counselor Donovan worked directly on determining whether
23 Plaintiff's father, Dr. Jose Maria Moncada, had diplomatic privileges and immunities
24 at the time of Plaintiff's birth. (*Id.* at 16:2-5.)

25 **B. The Process for Recognizing Diplomats with Full Diplomatic Privileges and
26 Immunities**

27 15. There are—both today and at the time of Plaintiff's birth—two levels of
28 diplomatic immunity that are granted by the USUN: (1) Full Diplomatic Privileges

1 and Immunities; and (2) Official Acts Immunities. An individual who serves his or
2 her mission in an administrative capacity—including, for instance, as a chauffeur or a
3 chef—is entitled to “official acts immunities.” Such an individual would possess
4 immunity only for actions that flow from their employment responsibilities and *would*
5 *not* be entitled to full diplomatic privileges and immunities. Conversely, an individual
6 who serves his or her mission in a diplomatic capacity *would be* entitled to full
7 diplomatic privileges and immunities and thus would *not* be subject to the jurisdiction
8 of the United States. (*Id.* at 58:8-59:5) (Donovan).

9 16. The Host Country Affairs Section has a process for recognizing
10 diplomats with full diplomatic privileges and immunities and creating internal records
11 documenting such privileges and immunities. This process is substantively the same
12 today—accounting for changes in technology—as it was at the time of Plaintiff’s
13 birth. (*Id.* at 24:16-18, 34:4-16, 112:15-22) (Donovan).

14 17. Information that was once contained in a paper file called a “KARDEX”
15 is now retained in a computerized database called “TOMIS.” (*Id.* at 22:15-18;
16 112:20-22.)

17 18. Before a diplomatic family arrives in the United States, their respective
18 mission typically would “communicate via diplomatic note to the Office of UN
19 Protocol the name of the diplomat, the diplomatic title, the work that [the diplomat is]
20 going to be doing at the mission, as well as any family members . . . [and this
21 information] would all be sent by diplomatic note to the UN Office of Protocol, which
22 would then . . . verify [the information.]” (*Id.* at 32:7-15) (Donovan).

23 19. The U.N. reviews this information and “has to check a few boxes” to
24 determine whether a given individual is entitled to full diplomatic privileges and
25 immunities. Namely, the UN determines whether the individual has a diplomatic title
26 and whether the individual will, in fact, be doing diplomatic work. (Tr. at 54:21-24)
27 (Donovan).

1 20. After this verification takes place, the U.N. Office of Protocol sends the
2 relevant information to the USUN with two requests: (1) A request to register the
3 individual; and (2) a request for recognition with privileges and immunities, if there is
4 a determination that “it’s a diplomatic person.” (*Id.* at 32:16-20) (Donovan).

5 21. Before the implementation of the TOMIS system, this registration was
6 memorialized in a physical paper index card called a KARDEX. KARDEX cards
7 included the following information: “[T]he name of the diplomat, their rank, their
8 diplomatic title . . . the country [the diplomat was] serving from, and then any family
9 members who were notified to [the USUN].” (*Id.* at 22:15-22) (Donovan).

10 22. KARDEX cards were created for each diplomat and filed in alphabetical
11 order in a card catalog file that still exists at the USUN Office, with records dating
12 back to 1947. (*Id.* at 29:20-24) (Donovan).

13 23. Typically, because all members of a diplomatic household are recognized
14 with full privileges and immunities, the USUN “would want the entire family to be
15 listed” on the KARDEX. (*Id.* at 35:1-4) (Donovan).

16 24. Often times, however, KARDEX cards were not updated to reflect the
17 birth of a child into a diplomatic household because, *inter alia*, the respective mission
18 did not report the birth to the USUN. (*Id.* at 35:15-19) (Donovan).

19 25. Whether or not an individual family member’s name was listed on the
20 KARDEX card had no bearing on “the level of privileges and immunities” that they
21 possessed at that time. (*Id.* at 31:10-14, 35:23-36:1) (Donovan).

22 26. As noted *supra*, today, information previously recorded through
23 KARDEX is now collected in a computerized database called TOMIS. TOMIS
24 accomplishes “virtually the same [purpose as the KARDEX system], only it’s done in
25 the computer world instead of on a piece of paper.” (*Id.* at 112:15-22, 72:12-13)
26 (Donovan).

27 27. “The USUN Blue List contains members of delegations to the United
28 Nations entitled to diplomatic privileges and immunities.” (*Id.* at 24:7-9) (Donovan).

1 28. The USUN Blue List *does not* contain the names of individuals who
 2 possess only official acts immunity: “And we do not keep a list of those who have
 3 official acts immunity. It’s only those who have full privileges and immunities.” (*Id.*
 4 at 67:14-18) (Donovan).

5 29. In addition, the USUN Blue List contains the name of the diplomat’s
 6 spouse. It does not contain the names of a diplomat’s children: “[G]oing back all the
 7 way to 1947, the records only include the principal diplomat and then the spouse.”
 8 (*Id.* at 24:10-13, 16-18) (Donovan).

9 30. As noted *supra*, an individual’s name would *not* be contained on the
 10 USUN Blue List unless that individual had been afforded full diplomatic agent-level
 11 privileges and immunities by the USUN. (*Id.* at 24:19-23) (Donovan).

12 31. More precisely, if an individual’s name is contained on the USUN Blue
 13 List for a given month, this constitutes “airtight” evidence that the named individual
 14 possessed full diplomatic agent-level privileges and immunities at that time. Thus, the
 15 most significant document that can be reviewed to determine whether an individual
 16 possessed diplomatic agent-level privileges and immunities is the USUN Blue List for
 17 the corresponding time. (*Id.* at 29:6-9, 45:12-16) (Donovan).

18
 19 **C. The Diplomatic Status of Dr. Moncada at the time of Plaintiffs Birth**

20 *i. Defendant’s Evidence that Dr. Moncada possessed full diplomatic
 21 privileges and immunities at the time of Plaintiff’s birth*

22 32. Plaintiff Roberto Moncada was born in New York City on July 6, 1950,
 23 to Dr. Jose Maria Moncada (“Plaintiff’s father” or “Dr. Moncada”) and Ms. Blanca
 24 Morales (“Plaintiff’s Mother” or “Ms. Morales”). (Dkt. No. 125, SF 3; Ex. 12 (Birth
 25 Certificate.))

26 33. At the time of Plaintiff’s birth, neither Dr. Moncada nor Ms. Morales
 27 were citizens of the United States. (*See* Ex. 19 (Dr. Moncada’s U.S. Visa
 28 Application); Ex. 12 (Information Sheet); SF 9-10.)

1 34. At the time of Plaintiff's birth, Dr. Moncada and Ms. Morales had three
 2 other children: Jose Maria; Horacio; and Marlene. (*See* Ex. 2, "KARDEX.")

3 35. As noted *supra*, where, as here, there are unresolved questions about an
 4 individual's diplomatic privileges and immunities, Minister Counselor Donovan is
 5 charged with reviewing and analyzing the relevant information alongside his staff.
 6 (Tr. 15:19-16:5) (Donovan).

7 36. The first time Minister Counselor Donovan learned of Plaintiff was "at
 8 some point in 2018" after a staff member raised "the issue of whether Dr. Moncada
 9 would have had privilege and immunities during the time . . . that he was in New York
 10 serving his mission to the UN." (*Id.* at 16:20-17:8-18) (Donovan).

11 37. Later that year, Minister Counselor Donovan determined that Dr.
 12 Moncada possessed privileges and immunities at the time of Plaintiff's birth. (*Id.* at
 13 17:22-18:1) (Donovan).

14 38. On July 27, 2018, Defendant revoked Plaintiff's passport pursuant to 22
 15 C.F.R. § 51.62(b), which states that "[t]he Department may revoke a passport when
 16 the Department has determined that the bearer of the passport is not a U.S. national, or
 17 the Department is on notice that the bearer's certificate of citizenship or certificate of
 18 naturalization has been cancelled." (SF 14; 22 C.F.R. § 51.62(b).)

19 39. "The July 27, 2018 letter from the Department of State referenced
 20 'Department records' purportedly showing that Plaintiff's father was serving as the
 21 'Attaché to the Permanent Mission of Nicaragua to the United Nations' at the time of
 22 Plaintiff's birth. The letter concluded on this basis that Dr. Jose Maria Moncada and
 23 'the family members forming his household, including [Plaintiff], were accorded
 24 diplomatic agent level immunity pursuant to the United Nations Headquarters
 25 Agreement,' and accordingly Plaintiff was 'not born subject to the jurisdiction of the
 26 United States and [he] did not acquire U.S. citizenship by virtue of [his] birth here'
 27 and, as a result, is 'not entitled to hold a U.S. passport and [his] passport is revoked.'"
 28 (SF 15 (quoting Compl. Ex. A. at 10.))

1 40. “On October 25, 2018, Plaintiff, by and through counsel, wrote a letter to
2 the Office of Legal Affairs of the U.S. Department of State requesting that the
3 Department of State reconsider its adverse action of July 27, 2018.” (SF 16.)

4 41. “On November 28, 2018, Christine L. McLean, Division Chief of Legal
5 Affairs, replied to Plaintiff’s reconsideration request. Ms. McLean reiterated that
6 Plaintiff’s passport was revoked because the ‘Department determined that he is not a
7 U.S. national.’” (SF 17.)

8 42. In 2020, Minister Counselor Donovan was asked “by the legal adviser’s
9 office to put together a certification based on the information that [his office] had
10 uncovered in 2018.” (Tr. at 48:19-23) (Donovan).

11 43. On April 14, 2020, Minister Counselor Donovan and the Host Country
12 Affairs Section certified that: “The official records of the Host Country Affairs
13 Section of the U.S Mission indicate that Dr. Jose Maria Moncada was appointed as
14 Attaché to the Nicaraguan Mission to the United Nations on April 27, 1950, and
15 together with other family members forming his household, began to enjoy diplomatic
16 agent level privileges and immunities on April 27, 1950. On March 18, 1955, the
17 United Nations provided the U.S. Mission with official notification of Dr. Moncada’s
18 termination from the Nicaraguan Mission. Dr. Moncada and his family enjoyed
19 diplomatic agent level immunity until March 18, 1955.” (Ex. 1, “Certification
20 Letter.”)

21 44. In making this certification, Minister Counselor Donovan reviewed, *inter*
22 *alia*, the USUN Blue Lists; the KARDEX; and “two corroborating documents which
23 are summaries of meeting in the general assembly where [Dr. Moncada] represented
24 Nicaragua discussing substantive matters that would have been discussed by
25 diplomats.” (Tr. at 22:5-23, 71:13-17) (Donovan).

26 45. Minister Counselor Donovan stated that the most important official
27 records that he reviewed were the USUN Blue Lists: “The most important [official
28 record] was the diplomatic list—the U.S. Missions, diplomatic list for diplomats

1 assigned to their respective missions to the United Nations who we have recognized
2 with full privileges and immunities.” (*Id.* at 22:7-11) (Donovan).

3 46. Minister Counselor Donovan stated that “[w]e had these documents [the
4 USUN Blue Lists] going all the way back to 1947 when the U.N. was created and our
5 office was created.” (*Id.* at 22:11-13) (Donovan).

6 47. Minister Counselor Donovan stated that the USUN Blue List is
7 “extremely controlling” and “airtight” evidence that a listed individual possessed full
8 diplomatic privileges and immunities. (*Id.* at 29:6-8, 119:3-6) (Donovan).

9 48. Minister Counselor Donovan stated that “in the time that [he has]
10 work[ed] in the office, [he does not] recall a time that [the USUN] had to change our
11 recognition of somebody who had immunity that was on the [USUN Blue] list unless
12 they depart or unless they change jobs.” (*Id.* at 119:7-10) (Donovan).

13 49. As noted *supra*, the USUN Blue List does not contain—and the Host
14 Country Affairs Section does not keep—a list of individuals who have been afforded
15 only official acts immunity. (Tr. 67:16-18) (Donovan).

16 50. Dr. Moncada served as a consul for the Nicaraguan Consulate in New
17 York City at least as early as May 26, 1949. (*See* Ex. 23 at 44.¹)

18 51. On May 26, 1949, President Harry Truman issued an Exequatur to
19 Plaintiff’s father in recognition of his appointment as “Consul of Nicaragua at New
20 York, New York.” (Ex. 15.)

21 52. A certificate recognizing Plaintiff’s father as Deputy Consul of
22 Nicaragua was signed by the Mayor of New York City, William O’Dwyer. (Ex. 16.)

23 53. A United Nations document entitled “Permanent Missions and
24 Delegations to the United Nations” lists Dr. Moncada as both “Consul, New York”
25 and “Attaché.” (Ex. 13 at 2.)

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¹ The listed page number refers to the page of the PDF in which the citation appears on the Trial
28 Exhibit, not the page numbering on the bottom of the document itself.

1 54. The document contains the names of two other individuals under the
2 heading of Nicaragua. Dr. José Sanson Teran is listed as the “First Secretary of
3 Embassy, Secretary-General” and Dr. Guillermo Sevilla-Sacasa is listed as
4 “Ambassador Extraordinary and Plenipotentiary to the United States of America,
5 Permanent Representative to the United Nations, Representative to the Interim
6 Committee.” (*Id.*)

7 55. The document does not list Dr. Moncada’s wife but appears to list the
8 spouses of other individuals, including Dr. Sevilla-Sacasa. (*Id.*)

9 56. Plaintiff’s birth certificate lists Dr. Moncada’s “Usual Occupation” as
10 “Deputy Consul” at the “Nicaragun Consul.” (Ex. 12, “Birth Certificate.”)

11 57. Dr. Moncada appears in the June 1950 USUN Blue List; the July 1950
12 USUN Blue List; and the August 1950 USUN Blue List. (Exs. 3, 4, 5.)

13 58. Because Plaintiff was born on July 6, 1950, Dr. Moncada thus appears in
14 the USUN Blue List for the month immediately preceding Plaintiff’s birth, the month
15 of Plaintiff’s birth, and the month immediately following Plaintiff’s birth.

16 59. Dr. Moncada is listed as an Attaché in the June, 1950; July, 1950; and
17 August, 1950 USUN Blue Lists. (Exs. 3, 4, 5.)

18 60. An Attaché is a diplomatic title afforded to an individual with full
19 diplomatic privileges and immunities. It is “pretty clear and well-recognized in the
20 diplomatic [world] as a very specific title of individuals who do . . . diplomatic work
21 in the diplomatic world.” (Tr. at 26:15-19, 62:16-19) (Donovan).

22 61. The USUN Blue Lists for June, July, and August of 1950 state that: “The
23 persons listed herein are recognized by the Department of State as entitled to
24 diplomatic privileges and immunities in the territory of the United States under the
25 provisions of Section 15 of the Headquarters Agreement between the United States
26 and the United Nations. (Public Law 357-80th Congress). Identification cards have
27 been issued by the Department to the Delegation Officers listed.” (Exs. 3, 4, 5.)

1 62. The “diplomatic privileges and immunities” referred to in the USUN
2 Blue Lists are understood to confer “full privileges and immunities.” (*Id.* at 70:11-
3 71:11) (Donovan).

4 63. Dr. Moncada addressed the United Nations General Assembly Fifth
5 Session (“UNGA”) on October 4, 1950. According to the Official Records
6 memorializing this 240th meeting, Dr. Moncada stated that: “[H]is delegation was
7 gratified at the work done by the Secretary General in connexion with the 1951 budget
8 estimates; it counselled the utmost caution in proceeding with the proposed reductions
9 in the budget for 1951. It was not necessary to be an expert economist to appreciate
10 the good work carried out by the United Nations with the funds placed at its disposal.
11 The essential work of the United Nations was to maintain peace, and therefore every
12 effort should be made to strengthen the machinery at its disposal and to encourage the
13 Secretariat.” (Ex. 7 at Def-00000043 at ¶ 33.)

14 64. Dr. Moncada further “emphasized that Member States should not allow
15 the United Nations to be weakened in the present difficult times. If the United
16 Nations did not receive sufficient funds its efforts would naturally be restricted and its
17 staff [would] become discontented and corrupt.” (*Id.* at ¶34.)

18 65. Dr. Moncada argued: “Aggression was the real reason for the expansion
19 of the budget of the United Nations. As long as there was ill-will in the world and
20 countries were armed to the teeth for the purpose of stirring up trouble and fomenting
21 wars, the United Nations should be given all the necessary funds, resources, and staff
22 to curb aggression.” (*Id.* ¶35.)

23 66. Dr. Moncada concluded that: “He hoped the time would come when in
24 addition to increasing the budget of the United Nations the various Member States
25 would be in a position to contribute funds for the founding of United Nations
26 universities devoted to the peaceful uses of science and the arts.” (*Id.* at DEF-
27 00000044 at ¶36.)

1 67. Dr. Moncada again addressed the UNGA Fifth Session on December 5,
2 1950. According to the Official Records memorializing this 275th Meeting, Dr.
3 Moncada: “[T]ook the opportunity to point out that the principle of equitable
4 geographical distribution was not fully applied in the Secretariat. There was not a
5 single national of his country employed by the United Nations.” (Ex. 8 at DEF-
6 00000050 at ¶57.)

7 68. At both UNGA Meetings in which Dr. Moncada addressed the General
8 Assembly, “he represented Nicaragua discussing substantive matters that would have
9 been discussed by diplomats.” Dr. Moncada’s participation in both UNGA Meetings
10 signifies what would be “considered diplomatic work” consistent with his repeated
11 inclusion on the USUN Blue List. (Tr. at 71:13-17) (Donovan).

12 69. The Yearbook of the United Nations for the year 1950 (“Yearbook”)
13 “presents the record of the [United Nations] during 1950.” The Yearbook lists
14 Guillermo Sevilla-Sacasa as Nicaragua’s representative to the U.N. and lists Colonel
15 Carlos Eddie Monterey and Diego Manuel Chamorro as “Alternates.” It makes no
16 reference to Dr. Moncada. (See Ex. 25 Part 1 at 4, 49.)

17 70. The Yearbook is not authoritative and has no bearing on whether the
18 USUN affords full diplomatic privileges and immunities to a given individual. (Tr.
19 76:7-18.) (Donovan) (“[W]hat the UN publishes would have absolutely no bearing on
20 [USUN’s] determination in terms of recognition of full privileges and immunities
21 because the United Nations does not determine that recognition of full privileges and
22 immunities.’); *id* at 84:7-9 (“[T]he yearbook has absolutely no impact on our
23 determination as to whether a diplomat is eligible for diplomatic privileges and
24 immunities.”) (Donovan).

25 71. This is because the United Nations “does not have the authority to
26 determine who is recognized with immunity and who isn’t.” (Tr. 78:18-20, 80:3-6)
27 (Donovan); (*see generally* Ex. 25).

1 72. On April 27, 1950, the Host Country Affairs Section received
2 “Notification from U.N.” regarding Dr. Moncada and his family. This means that the
3 USUN was informed that “this diplomatic family had arrived” with a request to
4 register Dr. Moncada and his family. (Tr. 33:11-15) (Donovan); (Ex. 2).

5 73. A document titled “Permanent Delegation of Nicaragua to the United
6 Nations” dated April 30, 1950, contains the “request for registration [for Dr.
7 Moncada] coming . . . from the United Nations Office of Protocol back in April of
8 1950 . . . to the [USUN].” The document lists Dr. Moncada’s Title as “Attaché.” (Tr.
9 38:22-25) (Donovan); (Ex. 6).

10 74. This Request was approved on May 5, 1950 and an Identification Card
11 was issued to Dr. Moncada on May 9, 1950. (Ex. 2)

12 75. USUN was not able to locate in its records the request for privileges and
13 immunities that, as noted *supra*, a matter of practice, would have come after the
14 request for registration. (Tr. 82:15-17) (Donovan). As Plaintiff avers, “[t]here is no
15 record—paper or electronic—of a request for privileges and immunities for Plaintiff’s
16 father.” (Dkt. No. 144-1 at 8 ¶ 26.)

17 76. The Court credits Minister Counselor Donovan’s testimony that because
18 Dr. Moncada “was listed on the blue list of diplomats . . . for as many years as he
19 [was], we would have received a request for diplomatic privileges and immunities.
20 Otherwise, [USUN] wouldn’t have included him on [the blue] list.” (Tr. 82:22-83:1)
21 (Donovan).

22 77. Put more precisely, the Court credits Minister Counselor Donovan’s
23 conclusion that a request for diplomatic privileges and immunities for Dr. Moncada
24 was received by USUN despite the fact that USUN was unable to produce that request
25 more than seventy years later.

26 78. At some point thereafter, a KARDEX was created for Dr. Moncada. The
27 KARDEX likewise lists Dr. Moncada’s Title as “Attaché.” (Ex. 2.)
28

1 79. The KARDEX lists Dr. Moncada's wife, Blanca, and his three children at
2 the time: Jose Maria, Horacio, and Marlene, as well as his Aunt, "Sra. Juana M.
3 Cuadra." (Ex. 2.)

4 80. The KARDEX was updated on October 31, 1952, to reflect a change in
5 Dr. Moncada's "Residence Address." This change supports Minister Counselor
6 Donovan's conclusion that the KARDEX was not made in error. (*Id.*)

7 81. Plaintiff is not listed on the KARDEX. This is likely because Plaintiff
8 had not been born at the time that it was created. (*Id.*; Tr. 35:9-12.) ("[I]t seems to me
9 that, when the KARDEX was originally created . . . that [Plaintiff] had not yet been
10 born. So he would not have been included.") (Donovan).

11 82. The KARDEX was not updated to reflect Plaintiff's birth. As noted
12 *supra*, this fact has no bearing on whether Plaintiff had full privileges and immunities
13 at the time of his birth. (Tr. 31:10-15, 35:23-36:1) (Donovan).

14 83. On March 18, 1955, the U.N. Office of Protocol "provided the U.S.
15 Mission with official notification of Dr. Moncada's termination from the Nicaraguan
16 Mission." (Ex. 1, 2; Tr. 21:17-20) (Donovan).

17 84. This termination notice is reflected in the KARDEX. (Ex. 2.)

18 85. Dr. Moncada served as both Deputy Consul, which affords only official
19 acts immunity, and Attaché, which affords full diplomatic privileges and immunities.
20 (Tr. 125:9-23, 126:3-8) (Donovan).

21 86. Dr. Moncada served as Attaché at the time of Plaintiff's birth. (*See e.g.*,
22 Exs. 3-5.)

23 87. Dr. Moncada thus possessed full diplomatic privileges and immunities
24 from April 27, 1950, until March 18, 1955. (Exs. 1-5.)

25 88. Dr. Moncada thus possessed full diplomatic privileges and immunities at
26 the time of Plaintiff's birth.

1 *ii. Past Determinations Regarding Plaintiff's Citizenship*

2 89. Minister Counselor Donovan's determination that Dr. Moncada
3 possessed full diplomatic privileges and immunities at the time of Plaintiff's birth is
4 contrary to past determinations—both implicit and explicit—that he did not.

5 90. "The U.S. Department of State issued Plaintiff U.S. passport books in or
6 around June 15, 1955; January 29, 1973; July 3, 1978; and October 6, 1999; and a
7 passport card in or around May 19, 2010, in connection with which he subscribed the
8 oath of allegiance." (SF 7.)

9 91. "On November 20, 1978, Plaintiff submitted a Form I-130, Petition to
10 Classify Status of Alien Relative for Issuance of Immigrant Visa, on behalf of his
11 father, Dr. Jose Maria Moncada, to the Immigration and Naturalization Service
12 ('INS.')" (SF 8.)

13 92. "On October 25, 1979, a consular officer issued Dr. Jose Maria Moncada
14 an immigrant visa." (SF 9.)

15 93. "On November 2, 1979, the United States admitted Dr. Jose Maria
16 Moncada as a permanent resident." (SF 10.)

17 94. "On or about June 3, 1997, Plaintiff submitted a Form I-130, Petition to
18 Classify Status of Alien Relative for Issuance of Immigrant Visa, on behalf of his then
19 spouse, Manuela Navarro-Ramirez, to the INS, on the basis of [Plaintiff's] U.S.
20 citizenship." (SF 11.)

21 95. On April 26, 2001, Department of State Branch Chief of Information
22 Services Hugh Howard sent a letter to the INS to confirm that Plaintiff's father's name
23 did not appear in the "Department of State Diplomatic Lists." (SF 12; Dkt. No. 147-
24 1.)

25 96. "On May 2, 2021, INS approved the Form I-130 referenced in Paragraph
26 [94] above." (SF 13.)

27 97. Plaintiff's State Department Passport File demonstrates that on multiple
28 occasions, individuals at the State Department inquired into Plaintiff's citizenship

1 status. On each occasion, it was determined that Plaintiff was a United States citizen.
 2 (See generally Ex. 29.)

3 98. For instance, in 1978, the State Department endeavored to answer the
 4 very question animating this litigation: Did Dr. Moncada possess full diplomatic
 5 privileges and immunities at the time of Plaintiff's birth? It determined that he did not
 6 and thus that Plaintiff was a United States citizen. The same conclusion is implicit in
 7 the issuance of *five* passport books and passport cards to Plaintiff over a 55-year
 8 period. (See generally Ex. 29, SF 7.)

9 99. A telegram was sent in November of 1978 from "AMEBASSY
 10 MANAGUA" to "SECSCTATE WASHDC 9171." The Subject Line is "Verification
 11 of Citizenship." The telegram reads as follows: "Roberto Moncada. DPOB, July 6,
 12 1950, New York, New York [sic], has filed resident Visa Petitions for several family
 13 members based on his having been born a U.S. Citizen. He was issued a U.S.
 14 Passport in the U.S. We notice, however, that on his birth certificate his father is
 15 listed as a Deputy Consul [w]ho worked in the Nicaraguan Consulate. Was Passport
 16 Office aware of this? Is it possible that father was working in consulate and was not
 17 on Blue List/before we proceed further with the case, we would like to be sure that
 18 Moncada was not registered as U.S. citizen by mistake." (Ex. 29 at DEF-00000020.)

19 100. A Department of State "Memorandum of Conversation" that was drafted
 20 on December 7, 1978 reads as follows:² Subject: Roberto Moncado [sic] Participants:
 21 Mr. █ and Ms. █ Protocol 20291 "Informed by Ms. █ that name of subject's
 22 father does *not* repeat *not* appear on blue list as person possessing Diplomatic status at
 23 time of subject's birth [sic] at New York, New York on July [sic] 6, 1950. (Ex. 29 at
 24 Def-00000019) (Emphasis added.)

25 101. On December 8, 1978, a telegram with the subject line "U.S.
 26 Citizenship" was sent. The telegram reads as follows: "1. Protocol Office reports that

28 2 Redactions are replicated as they appear in the Trial Exhibits.

1 name of Moncada's father does *not* repeat *not* appear on blue list as person possessing
 2 diplomatic immunity status at time of birth of Roberto Moncada at New York, New
 3 York on July 6, 1950. Roberto Moncada would therefore have acquired U.S.
 4 Citizenship at birth. YY." (Ex. 29 at Def-00000017-18.) (Emphasis added.)

5 102. On April 26, 2001, a letter was sent from Hugh Howard, the "Branch
 6 Chief, [of] Information Services" at the Ralph J. Bunche Library housed within the
 7 Department of State to "Mr. Shimizu" an employee at Immigration and Naturalization
 8 Services (the "Shimizu Letter"). The Shimizu Letter states as follows: "As we
 9 discussed on the telephone on April 25, 2001, I have searched the Department of State
 10 Diplomatic List for 1949 and 1950 and have been unable to find any entries for Jose
 11 Maria Moncada or Jose Maria Moncada Lezama of the Embassy of Nicaragua. I have
 12 photocopied several entries and have included these in my fax, but you will see that
 13 the Nicaraguan mission remained fairly stable over that period." (Dkt. No. 147-1 at 1,
 14 DEF 00000058.)

15 103. The Shimizu Letter attached several entries from the Department of State
 16 Diplomatic List ("State Department Blue List") between 1949 and 1950. Dr.
 17 Moncada's name is not included. (*Id.* at DEF 00000059-62.)

18 104. Past inquiries into Dr. Moncada's diplomatic status led to repeated
 19 determinations that Dr. Moncada *did not* possess full diplomatic privileges and
 20 immunities at the time of Plaintiff's birth (or at any other time.) Considered against
 21 the backdrop of Minister Counselor's Certification to the contrary and, more
 22 importantly, the evidence bolstering that certification, this reveals a staggering
 23 breakdown in (and failure of) governmental procedures.

24 105. These failures do not, however, discredit the evidence before the Court
 25 demonstrating that Dr. Moncada possessed diplomatic immunity at the time of
 26 Plaintiff's birth.

27 106. The Court concludes that (1) at no point prior to 2018 did an individual
 28 charged with determining Dr. Moncada's diplomatic status consult the USUN Blue

1 List; and (2) at no point in time did the USUN erroneously determine that Dr.
2 Moncada did not possess full diplomatic privileges and immunities.

3 107. Minister Counselor Donovan testified that the past inquiries likely relied
4 on information that Dr. Moncada's name was not on the State Department's
5 Diplomatic List, colloquially known as the State Department Blue List: "[T]his letter
6 states that [Dr. Moncada] was not on the State Department's Diplomatic List for the
7 embassy, but we have the separate [USUN Blue List] diplomatic list for the U.N.
8 Missions." (Tr. at 93:8-10) (Donovan). Though the Court cannot, with certainty,
9 make findings of fact regarding what occurred in 1978 and 2001, the Court concludes
10 that it is exceedingly likely that individuals tasked with determining Dr. Moncada's
11 diplomatic status referenced the State Department Blue List instead of the USUN Blue
12 List.

13 108. The State Department Blue List contains the names of individuals who
14 have been afforded diplomatic agent level privileges and immunities at bilateral
15 missions to the United States, such as Nicaragua's embassy in Washington, D.C. (Tr.
16 53:15-18; 120:21-122:25) (Donovan).

17 109. The State Department Blue List *does not* contain the names of
18 individuals who are members of foreign missions to the United Nations. Thus, it does
19 not contain the names of individuals to whom the United States afforded diplomatic
20 agent level privileges and immunities as a result of their accreditation to a foreign
21 mission to the United Nations. (*Id.* at 111:11-16) (Donovan).

22 110. In its closing argument, the Court asked the government, "What is your
23 response . . . to that exhibit that suggests somebody else looked at a blue list and came
24 out with a different conclusion?" (*See e.g.* Ex. 29 at Def-0000017) ("Protocol Office
25 Reports That Name of Moncada's Father Does Not Repeat Not Appear on Blue List
26 As Person Possessing Diplomatic Immunity Status At Time Of Birth of Roberto
27 Moncada. . ."). (*See also* Dkt. No. 147-1.) The government replied: "[Our] response
28 would be just as Minister Counselor Donovan testified . . . that that blue list most

likely was a State Department blue list and Mr. Moncada's father wouldn't be in that list." (Tr. at 166:15-21.) The Court credits Minister Counselor Donovan's (and the government's) explanation that Dr. Moncada would not have been on the State Department Blue List because Dr. Moncada was not assigned to the Nicaraguan Embassy. (Tr. 138:16-21.) The Court thus accepts and adopts Minister Counselor Donovan's conclusion that Dr. Moncada's absence from the State Department Blue List is irrelevant to the question of whether Dr. Moncada enjoyed full privileges and immunities at the time of Plaintiff's birth.

111. Because the individuals charged with determining Dr. Moncada's diplomatic status did not check the USUN Blue List, it is necessarily true that they were either unaware of its existence or indifferent to the crucial distinctions between the USUN Blue List and the State Department Blue List. Because the government repeatedly looked at the wrong evidence, it repeatedly got the wrong result. However, as stated *supra*, the government's past failures do not implicate the credibility of the evidence that is now before the Court—namely, the testimony of Minister Counselor Donovan³, the USUN Blue Lists, the KARDEX, and the UNGA records demonstrating that Dr. Moncada twice addressed the UNGA in a manner consistent with an individual performing diplomatic work.

112. Any Finding of Fact which is properly deemed a Conclusion of Law shall be considered a Conclusion of Law.

CONCLUSIONS OF LAW

A. Alien Determinations Under 8 U.S.C. § 1503(a)

113. Title 8, United States Code, section 1503(a) states that “[i]f any person who is within the United States claims a right or privilege as a national of the United

³ The Court in no way intends to impugn the character or competency of Minister Counselor Donovan nor his office. To the contrary, Minister Counselor Donovan performed his job and did precisely what he is charged with doing. It is clear that others, in the past, did not.

1 States and is denied such right or privilege by any department or independent agency,
 2 or official thereof, upon the ground that he is not a national of the United States, such
 3 person may institute an action under the provisions of section 2201 of title 28 against
 4 the head of such department or independent agency for a judgment declaring him to be
 5 a national of the United States . . . ” 8 U.S.C. § 1503(a)

6 114. “Plaintiff seeks a Declaratory Judgment from this Court that he is a U.S.
 7 Citizen by birth and an order compelling the Department of State to reopen and
 8 approve his application for a U.S. passport pursuant to 8 U.S.C. §1503(a).” (Dkt. No.
 9 144-1 at 15 ¶ 1.)

10 115. A lawsuit brought under §1503(a) is “not one for judicial review of the
 11 agency’s action. Rather, section 1503(a) authorizes a *de novo* judicial determination
 12 of the status of the plaintiff as a United States national.” *Richards v. Secretary of
 13 State, Dep’t of State*, 752 F.2d 1413, 1417 (9th Cir. 1985).

14 116. In an alienage determination under §1503(a), the Plaintiff bears the initial
 15 burden of producing “substantial credible evidence” of his citizenship claim.
 16 *Mondaca-Vega v. Lynch*, 808 F.3d 413, 419 (9th Cir. 2015).

17 117. This threshold showing is minimal. In *L. Xia v. Tillerson*, 865 F.3d 643,
 18 656 (D.C. Cir. 2017), the United States Court of Appeals for the District of Columbia
 19 Circuit held that “[p]resenting proof of a naturalization certificate or passport—even if
 20 already administratively cancelled—would seem to satisfy that *prima facie*
 21 requirement.”

22 118. In *Mondaca-Vega*, the Ninth Circuit held that because the petitioner
 23 “possessed a valid U.S. passport and successfully petitioned for the adjustment of
 24 status of his wife and children based on his purported status as a U.S. citizen[]” he had
 25 put forth “substantial credible evidence of U.S. citizenship.” 808 F.3d at 419 (cleaned
 26 up).

1 119. If the plaintiff satisfies his burden to rebut a presumption of alienage, the
2 “burden shifts back to the government to prove . . . [that the plaintiff is not a citizen
3 by] clear and convincing evidence.” *Id.* (cleaned up).

4 120. “[T]he power to make someone a citizen of the United States has not
5 been conferred upon the federal courts, like mandamus or injunction, as one of their
6 generally applicable equitable powers.” *I.N.S. v. Pangilinan*, 486 U.S. 875, 883-84
7 (1988) (citing 28 U.S.C. §§ 1361, 1651.)

8 121. This means that “[o]nce it has been determined that a person does not
9 qualify for citizenship, . . . the district court has no discretion to ignore the defect and
10 grant citizenship.” *Id.* at 884 (quoting *Fedorenko v. United States*, 449 U.S. 490, 517,
11 (1981)).

12 122. In sum, “[n]either by application of the doctrine of estoppel, nor by
13 invocation of equitable powers, nor by any other means does a court have the power to
14 confer citizenship in violation of these limitations.” *Id.* at 885. Thus, the Department
15 of State’s prior issuance of a passport—if issued in error—is not determinative of (nor
16 can it confer) citizenship.

17 123. The Constitution vests with the President the sole power to receive
18 Ambassadors and other public Ministers. U.S. Const. Art. II, § 1, (“The executive
19 power shall be vested in a President of the United States of America.”). *Id.* § 3 (“[The
20 President] shall receive Ambassadors and other public Ministers.”).

21 124. “The Reception Clause recognizes the President’s authority to determine
22 the status of diplomats, a fact long confirmed by all three branches.” *Muthana v.
23 Pompeo*, 985 F.3d 893, 907 (D.C. Cir. 2021) (cleaned up).

24 125. As a result, “courts have afforded conclusive weight to the Executive’s
25 determination of an individual’s diplomatic status.” *Id.* The Supreme Court has
26 instructed that courts may not “sit in judgment upon the decision of the executive in
27 reference to the public character of a person claiming to be a foreign minister. . .” *In
28 re Baiz*, 135 U.S. 403, 432 (1890)

1 126. The State Department’s certification “is the best evidence to prove the
2 diplomatic character of a person accredited as a minister by the government of the
3 United States” *Id.* at 421.

4 127. Some Courts, including the District of Columbia Circuit and the United
5 States Court of Appeals for the Fourth Circuit, have interpreted *In re Baiz* to hold that
6 the State Department’s formal certification of an individual’s diplomatic status is
7 conclusive, dispositive evidence that ends the judicial inquiry—so long as that
8 determination is based on a reasonable interpretation of the Vienna Convention. *See*
9 *e.g., Muthana*, 985 F.3d at 906 (“In light of more than a century of binding precedent
10 that places the State Department’s formal certification of diplomatic status beyond
11 judicial scrutiny, we conclude the certification is conclusive and dispositive evidence
12 as to the timing of Muthana’s diplomatic immunity.”); *United States v. Al-Hamdi*, 356
13 F.3d 564, 573 (4th Cir. 2004) (criminal conviction) (“[W]e hold that the State
14 Department’s certification, which is based upon a reasonable interpretation of the
15 Vienna Convention, is conclusive evidence as to the diplomatic status of an
16 individual.”); *Carrera v. Carrera*, 174 F.2d 496 (D.C. Cir. 1949) (family law suit);
17 *Abdulaziz v. Metropolitan Dade Cty.*, 741 F.2d 1328 (11th Cir. 1984) (section 1983
18 civil action).

19 128. The government has not cited—and this Court has not identified—a case
20 from the Ninth Circuit holding that *In re Baiz* dictates that the State Department’s
21 certification ends the inquiry, so long as it is based on a reasonable interpretation of
22 the Vienna Convention. In this Court’s prior Order denying, *inter alia*, the
23 Government’s Motion for Summary Judgment, the undersigned determined that:
24 “[Several out-of-circuit] persuasive authorities [cited by the government] are further
25 distinguishable [from the facts before this Court] because they involve individuals
26 seeking to invoke (not reject) diplomatic immunity in non-immigration contexts—
27 here, Plaintiff rejects any claim of immunity for himself and Dr. Moncada.” (Dkt. No.
28

1 84 at 14:7-9.) *Muthana*, though, had not been decided at the time of this Court’s
2 Order and it is beyond dispute that *Muthana*, like this instant matter, involves an
3 individual seeking to reject diplomatic immunity in an immigration context.

4 129. However, *Muthana* is, of course, not binding on district courts within the
5 Ninth Circuit and the Court stands by its prior conclusion: “[T]reating the
6 Government’s certification as conclusive here would allow the Government unbridled
7 freedom to modify an individual’s immigration status and retroactively justify that
8 decision based on a judicially nonreviewable, conclusive certification despite any and
9 all competing evidence. In short, such an approach would potentially render the
10 Government immune from suit under 8 U.S.C. § 1503(a) by virtue of a nonreviewable
11 certification [in any case that was even slightly rooted in a question of diplomatic
12 immunity.”] (*Id.* at 14:10-17.)

13 130. The Court concludes that the Secretary’s Certification—assuming it is
14 based on a reasonable interpretation of the Vienna Convention—is highly persuasive
15 evidence of an individual’s diplomatic status. It does not, however, mandate that the
16 Court must then close its eyes to the entire body of evidence that is before it.
17

18 131. The Court concludes that the 1978 Telegram to the Office of Protocol
19 stating that Dr. Moncada “does not appear . . . on blue list” is not a formal
20 certification.” (Ex. 29 at DEF 00000017; *see also* Ex. 29 at 18-20; Tr. 18-8:11.)
21 Though certainly relevant to the Court’s inquiry, the Telegram was an internal
22 communication focused on clarifying Dr. Moncada’s diplomatic status, not a formal
23 certification prepared in order to aid a judicial review of citizenship. It does not
24 “appear on the letterhead of the United States Mission, carry the United States seal,
25 and bear the signature of the Minister Counselor for Host Country Affairs.” *Muthana*,
26 985 F.3d at 912 (Tatel, J., concurring). Nor does it contain the words: “This is to
27 *certify that . . .*” *Id.* This is because it was not authored by the Minister Counselor
28

1 and there is no evidence to support the proposition that it was authored by an
2 individual with the authority to prepare a formal certification.

3 132. The Court likewise concludes that the Shimizu Letter is not a “formal
4 certification.” Here, too, there is no evidence to suggest that the author of the letter,
5 Hugh Howard, possessed the authority to submit a formal certification; the letter
6 represented an internal communication; the letter contains no indication that it was a
7 formal (or informal) USUN Certification; and the letter was not authored by a USUN
8 employee, let alone the Minister Counselor.

9 133. The Court concludes that the April 14, 2020 letter authored by Minister
10 Counselor Donovan is a “formal certification.” (Ex. 1.)

11 134. Plaintiff has satisfied his initial burden of producing “substantial credible
12 evidence” of his citizenship claim. *Mondaca-Vega*, 808 F.3d at 419. Specifically,
13 Plaintiff has satisfied his burden through the following evidence: (1) the December
14 1978 Telegram, *see* Ex. 29 at DEF 00000017-19; (2) the Shimizu Letter, *see* Dkt. No.
15 147 at DEF 00000058; and (3) the U.S. passport books and passport card issued to
16 Plaintiff on five occasions, *see* SF 7; Ex. 29.

17 135. Defendant, though, has satisfied its corresponding burden to demonstrate
18 by clear and convincing evidence that Plaintiff is not a U.S. citizen. In reaching this
19 decision, the Court relies on the following evidence that Dr. Moncada enjoyed full
20 diplomatic privileges and immunities at the time of Plaintiff’s birth:

21 136. (1) The USUN’s Certification prepared by Minister Counselor Donovan.
22 As noted *supra*, the Court does not believe that Minister Donovan’s Certification is
23 dispositive evidence that ends its inquiry. However, the Court finds that Minister
24 Counselor Donovan’s Certification is based on a reasonable interpretation of the
25 Vienna Convention and, given his expertise and credibility at trial, the Court affords
26 the Certification considerable weight. The Court rejects Plaintiff’s argument that
27 Minister Counselor Donovan’s Certification is not based on a reasonable
28 interpretation of the Vienna Convention. Plaintiff argues that “the evidence here

1 strongly suggests that Dr. Moncada’s function was performing administrative
 2 functions and duties as a consular employee in connection with his government’s
 3 representation to the U.N.” (Dkt. No. 127 (“Pl. Tr Brief”) at 4:15-18.) Plaintiff
 4 argues further that because Nicaragua’s request for privileges and immunities is
 5 absent, there is “no evidence indicating that Dr. Moncada’s duties were that of a
 6 ‘diplomatic agent’” consistent with Article 29 of the Vienna Convention. (Dkt. No.
 7 144-1 at 32 ¶ 41.) Plaintiff is correct that “[u]nder Article 37 of the VCDR, ‘Members
 8 of the administrative and technical staff of a diplomatic mission [enjoy] less extensive
 9 immunity than that of diplomatic agents.’” (Dkt. No. 127 at 4:19-22.) However, the
 10 Court finds by clear and convincing evidence that Dr. Moncada performed functions
 11 consistent with a diplomatic agent, not a member of the administrative and technical
 12 staff of the Nicaraguan Mission. (*See e.g. supra* ¶¶ 63-68; Exs. 6-8.)

13 137. (2) The USUN Blue List for June 1950, July 1950, and August 1950.
 14 The Court credits Minister Counselor Donovan’s representations that Dr. Moncada’s
 15 presence on the USUN Blue Lists for the months before, during, and after Plaintiff’s
 16 birth constitutes “airtight” and “extremely controlling” evidence that Dr. Moncada
 17 enjoyed full privileges and immunities at the time each list was created. (Tr. at 29:8,
 18 119:3-5.)

19 138. (3) Dr. Moncada’s KARDEX, which (1) lists his title as Attaché and (2)
 20 was updated to reflect a change in his Residence Address. (Ex. 2.)

21 139. (4) The records demonstrating that Dr. Moncada addressed the UNGA on
 22 two occasions—October 4, 1950 and December 5, 1950—in a manner consistent with
 23 “diplomatic work” that would not be delegated to an individual without diplomatic
 24 agent level immunity. (Ex. 7 at Def-00000043-44, Ex. 8 At DEF-00000050.)

25 140. As discussed *supra*, the Court concludes that Plaintiff’s evidence to the
 26 contrary—namely, the 1978 Telegram, the Shimizu Letter, and the repeated renewal
 27 of Plaintiff’s passport—collectively demonstrate a significant breakdown in
 28 governmental procedures that spanned multiple decades. However, the Court is

1 unable to conclude that these failures discredit the clear and convincing evidence that
2 Dr. Moncada enjoyed diplomatic agent level privileges and immunities at the time of
3 Plaintiff's birth.

4 141. Plaintiff's additional evidence to the contrary—namely, Dr. Moncada's
5 absence from the UN Yearbook and the government's inability to locate the request
6 for privileges and immunities—is similarly unavailing. As to the former, and as noted
7 *supra*, the Court credits Minister Counselor Donovan's representation that the
8 Yearbook has no bearing on USUN's determination regarding the recognition of full
9 privileges and immunities. (*See* Tr. at 76:7-18, 84:7-9.) And as to the latter, and as
10 noted *supra*, the Court credits Minister Counselor Donovan's testimony that Dr.
11 Moncada would not have been (repeatedly) included on the USUN Blue List in the
12 absence of a request for privileges and immunities. The fact that the USUN was
13 unable to locate this request more than seventy years after the fact does not persuade
14 the Court that a request was never made. This conclusion is bolstered by the entire
15 body of evidence before the Court.

16 142. Finally, the evidence suggesting that Dr. Moncada served a concurrent
17 role as a Deputy Consul—(*see* Tr. 101:20-34)—does not undermine the evidence that
18 Dr. Moncada possessed diplomatic agent level privileges and immunities as a result of
19 his role as Attaché. As the government concedes, “[a]bsent a special agreement
20 otherwise, an individual functioning solely as a consular official enjoys immunity
21 only for his official acts. . .” (Dkt. 143-1 at 36 ¶44.) However, there exists clear and
22 convincing evidence that Plaintiff's father also served as Attaché at the time of
23 Plaintiff's birth, and it is through this role that he received full diplomatic privileges
24 and immunities.

25 143. The Court does not find Plaintiff's speculative alternative hypothesis that
26 Plaintiff's father was merely appointed to address the UN as a “nondiplomat”
27 plausible. In a vacuum, it is theoretically possible that a nondiplomat could have
28 gained approval to address the UNGA on “an occasion or two.” (Tr. at 71:18-23.)

1 But here, too, Plaintiff's position does not square with the entire body of evidence
2 before the Court. To accept Plaintiff's proposition, the Court would have to ignore
3 Dr. Moncada's repeated presence on the USUN Blue List—a list that includes *only*
4 those individuals with full diplomatic privileges and immunities—and Dr. Moncada's
5 listed title (Attaché) on the Kardex.

6 **B. Children Born in the United States to Foreign Diplomats With
7 Diplomatic Agent Level Privileges and Immunities at the Time of their
8 Birth Do Not Acquire United States Citizenship at Birth**

9 144. “There are ‘two sources of citizenship, and two only: birth and
10 naturalization.’” *Miller v. Albright*, 523 U.S. 420, 423 (1998) (quoting *United States
11 v. Wong Kim Ark*, 169 U.S. 649, 702 (1898)).

12 145. “Within the former category, the Fourteenth Amendment of the
13 Constitution guarantees that every person ‘born in the United States, and *subject to the
14 jurisdiction thereof*, becomes at once a citizen of the United States, and needs no
15 naturalization.’” *Id.* at 423-24 (quoting *Wong Kim Ark*, 169 U.S. at 702) (Emphasis
16 added).

17 146. There is no evidence before the Court that Plaintiff obtained citizenship
18 through naturalization.

19 147. Children born in the United States to parents who possessed diplomatic
20 agent level privileges and immunities at the time of their birth are not born subject to
21 the jurisdiction of the United States and, as a result, do not acquire citizenship at birth.
22 See *Wong Kim Ark*, 169 U.S. at 693 (“The fourteenth amendment affirms the ancient
23 and fundamental rule of citizenship by birth within the territory . . . with the
24 exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns
25 or their ministers. . .”); see also *Muthana*, 985 F.3d 893 at 911 (“[Plaintiff’s daughter]
26 was not born a United States citizen because her father possessed diplomatic
27 immunity when she was born and therefore she was not born subject to the
28 jurisdiction of the United States.”).

1 148. In 1790, Congress passed An Act for the Punishment of Certain Crimes
2 Against the United States, Ch. IX § 25, 1 Stat. 112, 117-18 (April 30, 1790) (“1790
3 Statute”) (codified at 22 U.S.C. §§ 252-254) (repealed 1978)).

4 149. The 1790 Statute applied to foreign diplomats, including Plaintiff’s
5 father, in 1950, at the time of Plaintiff’s birth. This immunity extended to Plaintiff at
6 the time of his birth.

7 150. Section 25 of the 1790 Statute enacts that “if any writ or process shall at
8 any time be sued forth or prosecuted by any person or persons in any of the Courts of
9 the United States, or in any of the Courts of a particular state . . . whereby the person
10 of any ambassador, or other public minister, of any foreign prince or state, authorized
11 and received as such by the President of the United States, or any domestic or
12 domestic servant of any such ambassador or other public minister, may be arrested or
13 imprisoned, or his or their goods or chattels be distrained, seized, or attached, such
14 writ or process shall be deemed and adjudged to be utterly null and void, to all intents
15 and purposes whatsoever. . .” *Id.* § 25; *see also U.S. v. Ortega*, 24 U.S. 467, 469 n.a
16 (1826). Thus, under the 1790 Statute, the United States afforded full diplomatic
17 privileges and immunities to accredited foreign diplomatic agents.

18 151. The 1790 Statute applied to foreign diplomats (such as Plaintiff’s father)
19 at the time of Plaintiff’s birth on July 6, 1950.

20 152. The 1790 Statute, consistent with well-established international law,
21 conferred the same privileges and immunities enjoyed by the foreign diplomat to the
22 individuals who comprised the foreign diplomat’s household, including their children.
23 (“. . .whereby the person of any ambassador or other public minister of any foreign
24 prince or state, authorized and received as such by the President of the United States,
25 or any *domestic or domestic servant* of any such ambassador or other public minister.
26 . .) *Id.* § 25 (Emphasis added); *Carrera*, 174 F.2d at 498 (“The same immunity is not
27 only given to an ambassador himself, but to his subordinates, family and servants as
28 well.”).

1 153. The 1790 Statute was replaced by the Diplomatic Relations Act of 1978
2 (the “1978 Statute”), 22 U.S.C. §§ 254a-254e. The 1978 Statute applies to foreign
3 diplomats serving in the United States today.

4 154. “Pursuant to the [1978 Statute,] the governing law in the United States on
5 the issue of diplomatic privileges and immunities is the Vienna Convention on
6 Diplomatic Relations.” (the “VCDR”). *Raya v. Clinton*, 703 F. Supp 2d 569, 576
7 (W.D. Va. 2010) (quoting *Tabion v. Mufti*, 73 F.3d 535, 538 (4th Cir. 1996)).

8 155. The VCDR “codified longstanding principles of customary international
9 law with respect to diplomatic relations . . . [and] the Convention recognized no
10 exceptions to mission inviolability.” *767 Third Ave. Assocs. v. Permanent Mission of*
11 *the Republic of Zaire*, 988 F.2d 295, 300 (2d Cir. 1993). *See also* Rosalyn Higgins,
12 Editorial Comment, *The Abuse of Diplomatic Privileges and Immunities: Recent*
13 *United Kingdom Experience*, 79 Am.J.Int'l L. 642 (1985) (The Vienna Convention “is
14 agreed to be largely confirmatory of existing customary law.”)

15 156. Article 31 of the VCDR dictates that, *inter alia*, “A diplomatic agent
16 shall enjoy immunity from the criminal jurisdiction of the receiving State . . .” VCDR
17 art. 31. Articles 29-36 outline the criminal, civil, and administrative immunity
18 afforded to accredited diplomatic agents. *See* VCDR arts. 29-36.

19 157. Article 37 states that “The members of the family of a diplomatic agent
20 forming part of his household shall, if they are not nationals of the receiving State,
21 enjoy the privileges and immunities specified in Articles 29 to 36.” VCDR art. 37.

22 158. Article 39 states that “Every person entitled to privileges and immunities
23 shall enjoy them from the moment he enters the territory of the receiving State on
24 proceeding to take up his post or, if already in its territory, from the moment when his
25 appointment is notified to the Ministry for Foreign Affairs or such other ministry as
26 may be agreed.” Article 39 further clarifies that “When the functions of a person
27 enjoying privileges and immunities have come to an end, such privileges and
28

1 immunities shall normally cease at the moment when he leaves the country, or on
2 expiry of a reasonable period in which to do so . . .”

3 159. Article V, Section 15 of the U.N. Headquarters Agreement dictates that:
4 “such resident members of their staffs [missions to the United Nations] as may be
5 agreed upon between the Secretary-General, the Government of the United States, and
6 the Government of the Member concerned; . . . shall, whether residing inside or
7 outside the headquarters district, be entitled in the territory of the United States to the
8 same privileges and immunities, subject to corresponding conditions and obligations,
9 as it accords to diplomatic envoys accredited to it. . .” U.N. Headquarters Agreement,
10 Art. V, §15(2)-(4).

11 160. Consistent with the 1790 Statute and the Vienna Convention (as set forth
12 in in the 1978 Statute), when the United States affords diplomatic agent level
13 privileges and immunities, it extends the same privileges and immunities to the
14 diplomat’s children. *See e.g., Muthana*, 983 F.3d at 888-89; *Carrera*, 174 F.2d at 498.

15 161. As noted *supra*, the Court concludes that Defendant has put forth clear
16 and convincing evidence that Plaintiff’s father was afforded diplomatic agent level
17 privileges and immunities as a result of his position as Attaché at the Permanent
18 Mission to the United Nations from April 27, 1950 to March 18, 1955. (*See* Exs. 1-5;
19 Tr. 33:8-34:2.) Plaintiff was born on July 6, 1950. (*See* SF 3, Ex. 12.) Plaintiff was
20 thus born during the period in which Plaintiff’s father and the family members
21 forming his household possessed diplomatic agent level privileges and immunities.

22 162. Plaintiff possessed diplomatic agent level privileges and immunities at
23 the time of his birth. As a result, Plaintiff was not born subject to the jurisdiction of
24 the United States.

25 163. Plaintiff did not acquire citizenship at birth.

26 164. Defendant has demonstrated by clear and convincing evidence that
27 Plaintiff is not a U.S. citizen.

165. Thus, Plaintiff is not entitled to a judgment declaring him to be a national of the United States.

166. Any Conclusion of Law which is properly deemed a Finding of Fact shall be considered a Finding of Fact.

167. Defendant shall file a Proposed Judgment in accordance with these findings within 14 days.

CONCLUSION

The job of the district court is straightforward: Apply the law to the facts. This is what the Court has done. It is seldom appropriate to say anything more—but this case is extraordinary.

A child was born in America and told by the United States government—his government—that he was an American citizen. And, as the Court began this Order by noting, it told him this again and again and again and again. No surprise then, that he lived his entire life that way.

When the government finally realized it had been wrong all along, it told Plaintiff that he was not an American citizen and that this was not his home. So where is his home? Not Nicaragua because he has never lived there and because—as a direct result of the government’s errors—he is not (so far as the Court is aware) a citizen. Not America. Anywhere? Can he leave the United States? Could he return? Will he be deported? To where? What is he supposed to do? As he nears

1 seventy the government has made his life a nightmare.⁴

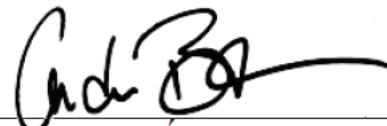
2 It is impossible to conclude that this is justice. Defendant has no legal
3 obligation to make right what is wrong. But *anyone* who causes this gravity of harm
4 possesses an urgent moral obligation to remedy what they have done—and in this
5 Court's humble opinion, the United States government has such an obligation.

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7 **IT IS SO ORDERED.**

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9 Dated: July 6, 2023



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11 HONORABLE ANDRÉ BIROTTE JR.
12 UNITED STATES DISTRICT COURT JUDGE

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25 ⁴ The Court in no way intends to introduce levity to what is a gravely serious situation of the government's making. But
26 it cannot help but note that that this Order is likely to leave Mr. Moncada in a state of limbo not unlike the predicament
27 faced by the main character in the 2004 film "The Terminal." See THE TERMINAL (Spielberg, 2004). In the film,
28 Viktor Navorski, traveling from the fictional country of Krakozhia, finds himself stuck in a New York City airport as a
coup d'état rages in his home country. Because the U.S. government does not recognize the new government,
Navorski's passport is seized, and he is left to wander a single airport terminal; he cannot enter the United States and he
cannot leave. That, though, is a movie—the uncertainty facing Mr. Moncada is real.